

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TRACY NIXON,)	
)	
Petitioner,)	
)	CIVIL ACTION NO.
VS.)	
)	3:17-CV-1257-G (BK)
JUDGE MARY BROWN,)	
)	
Respondent.)	

**ORDER ACCEPTING FINDINGS, CONCLUSIONS AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

After reviewing all relevant matters of record in this case, including the findings, conclusions, and recommendation of the United States Magistrate Judge and the objection thereto, in accordance with 28 U.S.C. 636(b)(1), the court is of the opinion that the findings and conclusions of the magistrate judge are correct and they are accepted as the findings and conclusions of the court. For the reasons stated in the findings, conclusions and recommendation of the United States Magistrate Judge, the petition for habeas corpus is **DISMISSED** without prejudice for lack of subject matter jurisdiction. *See* FED. R. CIV. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).

In accordance with FED. R. APP. P. 22(b) and 28 U.S.C. § 2253(c) and after considering the record in this case and the recommendation of the magistrate judge, petitioner is **DENIED** certificate of appealability. The court adopts and incorporates by reference the magistrate judge's findings, conclusions and recommendation in support of its finding that the petitioner has failed to show (1) that reasonable jurists would find this court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

If petitioner files a notice of appeal, he must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis* with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. See *Baugh v. Taylor*, 117 F.3d 197, 202; FED. R. APP. P. 24(a)(5).

SO ORDERED

September 12, 2017.



A. JOE FISH
Senior United States District Judge